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Before the
Federal Communications Commission
Washington, DC 20554

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In re Request)
Of Corr Wireless Communications, LLC)
for Waiver of)
Section 22.901(b))
of the Commission's Rules)

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Federal Communications Commission
Office of Secretary

REQUEST FOR WAIVER

Corr Wireless Communications, LLC ("Corr"), by its attorneys, hereby requests the Commission to waive its continued obligation to comply with Section 22.901(b) for the reasons set forth below. This section of the rules provides that cellular radio carriers must, until February 18, 2008,

(1) maintain the capability to provide compatible analog service ("AMPS") to cellular telephones designed in conformance with the specifications contained in sections 1 and 2 of the standard document ANSI TIA/EIA-553-A-1999 Mobile Station-Base Station Compatibility Standard...[and] (2) provide AMPS, upon request, to subscribers and roamers using such cellular telephones while such subscribers are located in any portion of the cellular CGSA where facilities have been constructed and service to subscribers has commenced. See also 20.12 of this chapter. Cellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.

As Corr will explain, the continued imposition of the burden of this rule is unwarranted given the dearth of customers who benefit by it, the costs involved both in terms of spectrum waste and operational costs, and the demonstrated lack of need to the intended beneficiaries of the rule.

I. BACKGROUND

Corr is a small family-owned and managed provider of cellular and PCS wireless service in northern Alabama and its environs. It began its communications existence as a small LEC in rural Alabama in the middle of the last century. Eventually the company, under the leadership of the current generation of the Corr family, diversified into cellular and PCS wireless telephony to more fully serve the needs of its customers. Opting to focus on the wireless business, the company divested itself of the local telephone company several years ago and now offers exclusively wireless service. Corr's original cellular license was for Alabama RSA -1 along the eastern border of Alabama. It later acquired other cellular and PCS assets but has always retained the cellular system on which its CMRS business was founded. Those legacy cellular facilities now come with a significant and onerous burden in the form of Section 22.901(b).

Corr has modernized its system over the last few years by the overlay of a GSM network over the historic TDMA network which had originally been built in the early '90's to handle cellular traffic. The overlay of the modern GSM system has not only permitted more efficient use of the spectrum but has improved the reliability of the E-911 system. It also opens up many more possibilities for roaming partners and more equipment options – both network and subscriber. As the GSM overlay has been implemented, the legacy TDMA system has been able to be gradually phased out. Fewer than 1400 subscribers remain on the TDMA system. Of those, fewer than 100 are active analog-only subscribers. Corr has not sold a single analog-only phone to a customer in five years, and most of the phones now in service by these subscribers are several years older than that. Under ordinary mobile telecommunications equipment turnover

patterns, this equipment would have been exchanged or retired years ago, but there is always a small segment at the edge of the curve who doggedly cling to their phones.

Corr has encouraged these customers to transition to the more modern digital system by every reasonable inducement. It has offered them discounted digital phones and even free digital phones in an effort to get them to switch. It has offered them much more cost-effective rate plans. All of this has been to no avail. The customers have declined to give up their old analog phones no matter how much sense the switch makes in terms of value, improved features on the new phones, improved sound quality, and greater coverage when roaming. Continuation of the analog service to this tiny group does not serve their interests and at the same time it imposes needless network costs on Corr (which must then be recouped from the entire customer base). Everyone's interests are ill-served by application of the rule, and waiver is there justified.

II. WAIVER STANDARD

Section 1.925 of the Commission's rules requires a waiver proponent to show either that application of the rule would not serve its underlying purpose or that, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or that the applicant has no reasonable alternative. *Duluth PCS, Inc. and St. Joseph PCS, Inc.*, 19 FCC Rcd. 7137 (2004). Here both prongs of the waiver standard apply.

A. Underlying Purpose Of The Rule Is Not Being Served

In *Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 19 FCC Rcd. 3239 (2004) (the "Recon Order"), the Commission revisited at length the basis and purpose of the analog service requirement found in 22.901(b). The

Commission opined that retention of the requirement was justified “to ensure that persons with hearing disabilities and emergency-only carriers have access to mobile telephony.” *Id.* at Para. 21. Neither purpose is being served here.

The Commission originally required the analog continuation in part because there was a scarcity of digital devices that could be used with hearing aids. *Id.* at para. 24. The Commission wanted to be sure that digital hearing aid-compatible devices would become readily available before allowing analog service to terminate. That evolution in availability has in the intervening years come to fruition. As of September 16, 2005, Corr and other wireless carriers were required to have at least two digital handset models per air interface available at retail stores that are hearing-aid compatible. 47 C.F.R. 20.19(c)(2). Corr has complied with this requirement and these phones are available in Corr’s stores for any Corr subscriber who has a hearing disability. The need to bridge the gap to the point where digital devices for the hearing-impaired are readily available has been eliminated by developments in the equipment industry and the implementation of Section 20.19. In addition, Corr is willing to make available a hearing aid-compatible digital phone without charge to any current analog customer who is hearing impaired and requests such a phone.¹ The needs of the hearing-impaired have therefore been addressed on both an industry-wide and carrier-specific basis; this combination obviates the need for continued maintenance of a legacy underlay system to serve the needs of this particular community.

The Commission was also concerned about the ability of people with donated analog phones to make emergency phone calls. *Id.* at para. 29-30. Because “emergency-only” users of old cell phones are not subscribers, their existence can only be known when they

¹ Corr has never gotten a single request for a TTY-type device from a hearing-impaired customer.

actually make an emergency phone call. The number of such potential analog users in Corr's service area appears to be negligible. The network infrastructure does not specifically capture the number of emergency calls made by non-subscribers, but we can safely assume that the number of such calls is a tiny fraction of the already tiny proportion that analog calls bear to overall calls. As the Commission recognized in the *Recon Order*, the number of such users should be rapidly diminishing as digital phones replace analog phones in the pool of donated cell phones. Hence, by June of this year, the number of analog emergency calls of this nature should be close to zero.

The Commission also noted in the *Recon Order* that it had some concern about the needs of small and regional carriers to maintain analog service due to roaming and interoperability concerns.² *Id.* at para. 32. Here, of course, Corr is itself a small regional carrier that is requesting the waiver. In Corr's case, as we suspect in the case of many other small carriers who have migrated, or will soon be migrating, to more contemporary digital air interfaces, the burden of maintaining an underlay of analog service far outweighs any advantage in terms of interoperability and roaming access.

All of these facts suggest that, at least in the case of Corr's system, the purpose for which the analog requirement was adopted is no longer being served. The needs of the public who would potentially be adversely affected by the elimination of analog service have been met by alternative means. Application of the rule is therefore no longer warranted.

B. Application of the Rule is Unduly Burdensome

The information set forth above demonstrates that the number of analog users on Corr's system is already minimal and is diminishing daily. As indicated, Corr estimates that it

² The Commission noted that this concern was insufficient in itself to justify prolongation of the analog requirement.

has fewer than 264 analog-only mobiles associated with its network, and the vast majority of these are inactive. The total number of TDMA subscribers (of which analog-only subscribers are a small subset) has diminished from 33,000 in March of 2003 to about 1,400 as of January, 2006. A network traffic analysis in January 2004 indicated that of 10 million TDMA calls in that month, only 95,000 (less than 1%) were analog. In the two years since then, the number of analog calls has diminished by about 80%. By contrast, the number of calls handled on Corr's GSM network has exploded to well over 30 million per month. Analog traffic therefore represents less than 0.06% of Corr's network volume. Corr has not sold any analog handsets since March of 2003. Under accepted customer equipment cycles, even the newest such equipment should have been retired by now.³ By the middle of 2006, the number of analog-only phones should be very close to zero. Yet the obligation of 22.901(b) remains.

To serve this minuscule and still dwindling amount of traffic, however, Corr must dedicate 64 of its 229 TDMA channels and precious space on its cell towers and in its transmitter buildings. Equally importantly, digital technology is far more spectrum-efficient (some have estimated by a factor of 10) than analog. It is safe to say that the explosion of mobile phone use that we have seen in this country since the mid-'90's would not have been possible without the conversion of carriers to digital technology – the necessary spectrum would simply not have been available to handle the analog traffic. The dedication of this spectrum and space to a tiny customer segment using outmoded technology results in underutilization of the spectrum. The Commission has frequently espoused as one of its guiding principles that radio spectrum should be put into the hands of the licensees who will put it to its highest and most efficient use. See, for example, *Principles for Promoting the Efficient Use of Spectrum by Encouraging the*

³ In the *Recon Order*, the Commission accepted as accurate an 18 – 30 month ownership cycle for cellular handsets. Para. 29.

Development of Secondary Markets, 15 FCC Rcd. 24178 (2000) (The combination of operational flexibility with economic need “will lead wireless licensee to maximize the use of their spectrum.”) In this instance, spectrum is being dedicated to indisputably *less* efficient use. The situation here would be like requiring gas stations to set aside a service bay with hay and oats to accommodate any customers who choose, for whatever reason, to use horse-and-buggies rather than automobiles. You will always have the horse-and-buggy set, but does it make sense to require every service station to bear the cost of making facilities available to that tiny group?

These costs are not negligible by any means. It is difficult to quantify exactly how much it costs to maintain the analog system alone because the cost is not normally segregated, but one particular cost figure stands out: the cost of PSAP connections for the analog system. Corr pays \$6,500 per month for PSAP interfaces associated with the analog system (over and above what it expends for other PSAP connections.) This single cost alone exceeds the revenues recoverable from the few customers who use analog phones. This does not include the unquantifiable costs of wasted spectrum and space. From an economic standpoint, it makes far more sense in every way for Corr to simply give these customers digital phones rather than permitting them to impose costs on Corr – and thus indirectly on all of Corr’s other customers – by persisting in the use of increasingly obsolete phones. Corr is willing to do that, yet as long as the requirement of 22.901(b) applies, the cost-causative customer has no impetus to convert to the mobile device that would serve him and the larger body of customers much better.

It is a time-honored principle of the Commission that charges should be imposed by common carriers on the cost-causative customer. For example, the FCC has explained that its “longstanding policy is to require, to the extent possible, rate structures to reflect the manner in which carriers incur costs.” *Access Charge Reform et al.*, CC Docket Nos. 96-262 and 94-1,

Sixth Report and Order, 15 FCC Rcd. 12962, 13014 (2000). “Inefficient rate structures lead to inefficient and undesirable economic behavior, and create an implicit subsidy between high-volume and low-volume users.” *Id.* The FCC has reiterated these principles on numerous occasions. *See, e.g., Toll Free Service Access Codes*, CC Docket No. 95-155, Fifth Report and Order, 15 FCC Rcd. 11939, 11953 (2000) (affirming the Commission’s “long-standing principle that costs should be borne by the cost-causer”); *Investigation of Interstate Access Tariff Non-Recurring Charges*, CC Docket No. 85-166, 2 FCC Rcd. 3498, 3501-02 (1987) (“the public interest is best served, and a competitive marketplace is best encouraged, by policies that promote the recovery of costs from the cost-causer”); *Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection for Special Access*, 8 FCC Rcd. 6909, 6916 (CCB 1993) (“the Commission has a long-standing precedent that rates and rate structures must be cost-causative”). This ensures that customers are properly incented, that charges are fairly and reasonably distributed, and, ultimately, that the common carrier network operates efficiently. Any other system necessarily injects economic distortions which skew the efficient working of the economic model. The analog requirement here has precisely that adverse effect.

In the end, the degree of burdensomeness of the regulation comes down to a cost/benefit analysis. The hypothetical benefit to a handful of analog-only subscribers must be weighed against the substantial costs to Corr and the waste of spectrum and other resources engendered. As we have seen, not only are the absolute numbers of analog calls minuscule, but they are not of the kind (hearing aid-related or “emergency only”) that the Commission was most concerned about enabling. Any hypothetical benefit to the analog-only customer is even more illusory when we consider that these customers could all shift -- without loss of their phone number and without any cost -- to a new digital phone which would have more features, better

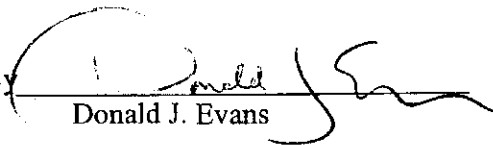
sound quality, and better E-911 capability than their antique phone. It makes no sense to hold a carrier hostage to the demonstrably insupportable equipment choices of this small group. The best course from a public interest standpoint is to nudge these customers into the 21st century by removing the analog requirement.

III. CONCLUSION

Because the underlying purpose of the rule is already being served and because continued application of the rule imposes financial and efficiency costs far out of proportion to any benefit, the application of Section 22.901(b) of the Commission's rules to Corr should be waived.

Respectfully submitted,

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